

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Appellant:

Tommy L. Davis, Jr.

Filed: October 27, 2003

Serial No.: 10/694,311

For: SYSTEM AND METHOD FOR
TRACKING AUTHENTICATED ITEMS

§
§
§
§
§
§
§
§
§
§
§

Confirmation No. 3566

Art Unit: 3687

Examiner: Iwarere, Oluseye

Docket No.: 013657.00005

APPEAL BRIEF

Christopher J. Rourk
JACKSON WALKER L.L.P.
901 Main Street, Suite 6000
Dallas, Texas 75202
214-953-5990 Direct Dial
214-661-6604 Direct Fax

TABLE OF CONTENTS

I.	REAL PARTY OF INTEREST (37 C.F.R. § 41.37(c)(1)).....	2
II.	RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c)(2))	3
III.	STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(3)).....	4
A.	TOTAL NUMBER OF CLAIMS IN APPLICATION.....	4
B.	STATUS OF ALL THE CLAIMS.....	4
1.	Claims cancelled: None	4
2.	Claims withdrawn from consideration but not cancelled: none.....	4
3.	Claims pending: 1-22	4
4.	Claims allowed: NONE.	4
5.	Claims rejected: 1-22	4
6.	CLAIMS ON APPEAL.....	4
IV.	STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(4)).....	5
V.	SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(5)).....	6
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL ((37 C.F.R. § 41.37(c)(6)).....	8
VII.	ARGUMENTS ((37 C.F.R. § 41.37 (c)(7))	9
VIII.	APPENDIX OF CLAIMS (37 C.F.R. § 41.37(c)(8))	19
IX.	EVIDENCE APPENDIX (37 C.F.R. 41.37(c)(9))	23
X.	RELATED PROCEEDINGS APPENDIX (37 C.F.R. 41.37(c)(10)).....	24

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re:	Patent Application of Tommy L. Davis, Jr.	:	Confirmation No. 3566
		:	
Appln. No.:	10/694,311	:	Examiner: Iwarerc, Oluseye
		:	
Filed:	October 27, 2003	:	Group Art Unit: 3687
		:	
For:	SYSTEM AND METHOD FOR TRACKING AUTHENTICATED ITEMS	:	Attorney Docket 013657.00005

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPELLANT'S BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal filed in this case on July 2, 2008 and received by the U.S. Patent and Trademark Office on July 2, 2008.

The fees required under §1.17(c), and any required petition for extension of time for filing this brief and related fees are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

The final page of this brief bears the practitioner's signature.

1. REAL PARTY OF INTEREST (37 C.F.R. § 41.37(c)(1))

The real party in interest in this appeal is Prova Group, Inc. by virtue of an of an Assignment from inventor Tommy Lee Davis, Jr. to T.L. Davis & Sons, L.L.C., recorded with the U.S. Patent and Trademark Office at Reel 015821, Frame 0830 on March 25, 2005; and by Assignment from David Earl Doser to G.A. Sullivan, recorded with the U.S. Patent and Trademark Office at Reel 015821, Frame 0854 on March 25, 2005; and by Assignment from G.S. Sullivan to T.L. Davis & Sons, L.L.C., recorded with the U.S. Patent and Trademark Office on March 25, 2005 at Reel 015821, Frame 0884; and by Assignment From T.L. Davis & Sons, LLC to Wetrak, Inc., recorded with the U.S. Patent and Trademark Office on March 25, 2005 at Reel 015830, Frame 0847; and by Assignment from Wetrak, Inc. to Prova Group, Inc., recorded with the U.S. Patent and Trademark Office on March 25, 2005 at Reel 015821, Frame 0881.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c)(2))

None.

III. STATUS OF CLAIMS (37 C.F.R. § 41.37(c)(3))

The status of the claims in this application are:

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 22 claims. (Claims 1-22)

Claims currently pending in the application: 22 pending claims

B. STATUS OF ALL THE CLAIMS

1. Claims cancelled: None
2. Claims withdrawn from consideration but not cancelled: none
3. Claims pending: 1-22
4. Claims allowed: NONE.
5. Claims rejected: 1-22
6. CLAIMS ON APPEAL

The claims on appeal are: 1-22

IV. STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(4))

The claims presently pending are those submitted January 29, 2008, in response to the non-final Office Action mailed October 29, 2007.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(5))

A concise explanation of the subject matter defined in claims 1-22, referring to the specification by page and line number, and to the drawing, if any, by reference characters, is provided below.

Claim 1 includes a system for tracking an authenticated item comprising an authentication device affixed to the item. By way of example and not by limitation, see 106 of Fig. 1 and the associated description at page 7, lines 15-25 of the specification. An item registration system receiving authentication device data from the authentication device and associated item data and storing the authentication device data and the associated item data. By way of example and not by limitation, see 102 of Fig. 1 and the associated description at page 6, line 15 to page 10, lines 32 of the specification. An owner registration system receiving owner registration data after a buyer has acquired the item. By way of example and not by limitation, see 306 of Fig. 3 and the associated description at page 15, line 7 to 13 of the specification. A buyer verification system receiving the authentication device data, the associated item data and the owner registration data and storing buyer verified data if the associated item data correlates to the owner registration data. By way of example and not by limitation, see 406 of Fig. 4 and the associated description at page 16, line 18 to 27 of the specification.

Claim 9 includes a method for tracking an authenticated item comprising affixing an authentication device to the item. . By way of example and not by limitation, see 106 of Fig. 1 and the associated description at page 7, lines 15-25 of the specification. Storing authentication device data and item description data. . By way of example and not by limitation, see 706 of Fig. 7 and the associated description at page 20, lines 11-15 of the specification. Receiving owner registration data. By way of example and not by limitation, see 708 of Fig. 7 and the associated description at page 20, lines 16-20 of the specification. Generating confirmation data if the owner registration data and the item description data are correlated to the authentication device data. By way of example and not by limitation, see 710 to 720 of Fig. 7 and the associated description at page 21, lines 13-27 of the specification.

Claim 15 includes a system for authenticating an item comprising means for receiving owner registration data and item data. By way of example and not by limitation, structure corresponding to this means plus function limitation can be found at 702 to 708 of Fig. 7 and the

associated description at page 19, line 34 to page 20, line 20 of the specification. Means for determining whether the item data matches stored item data. By way of example and not by limitation, structure corresponding to this means plus function limitation can be found at 710 to 720 of Fig. 7 and the associated description at page 20, line 21 to page 21, line 27 of the specification. Means for storing the owner registration data as authenticated owner registration data. By way of example and not by limitation, structure corresponding to this means plus function limitation can be found at 710 to 720 of Fig. 7 and the associated description at page 20, line 21 to page 21, line 27 of the specification.

Claim 16 includes the system of claim 15 wherein the means for determining whether the item data matches stored item data further comprises an item identification system receiving authentication device data from an authentication device attached to the item and storing the authentication device data as the item data. By way of example and not by limitation, structure corresponding to this means plus function limitation can be found at 702 to 708 of Fig. 7 and the associated description at page 19, line 34 to page 20, line 20 of the specification.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
((37 C.F.R. § 41.37(c)(6))

1. Whether the Specification discloses the corresponding structure for the means plus function elements.
2. Whether claims 15 and 16 are properly rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.
3. Whether claims 15 and 16 are properly rejected under 35 U.S.C. 101.
4. Whether claims 1 and 4-20 and 22 are properly rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,963,134 to Bowers et al.
5. Whether claims 2 and 3 are properly rejected under 35 U.S.C. 103(a) as being unpatentable over Bowers et al. in view of U.S. Patent No. 5,380,047 to Molee et al.
6. Whether claim 21 is properly rejected under 35 U.S.C. 103(a) as being unpatentable over Bowers et al. in view of U.S. Patent No. 5,732,401 to Conway.

VII. ARGUMENTS ((37 C.F.R. § 41.37 (c)(7))

1. **The Specification Clearly Discloses the Corresponding Structure for the Claimed Means Plus Function Elements.**

The Examiner objects to lack of antecedent basis for various means plus function elements. As identified above, proper support is clearly disclosed for each of the claimed means plus function elements. For example, consider the claimed means for receiving owner registration data and item data, for which by way of example and not by limitation, structure corresponding to this means plus function limitation was identified as being found at 702 to 708 of Fig. 7 and the associated description at page 19, line 34 to page 20, line 20 of the specification. The algorithm flowcharts include steps of receive owner registration data and item data (708). As discussed below, an algorithm flowchart such as that shown in the specification provides support for the corresponding structure for means plus function claims in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm. And quite frankly, the correlation between the claim limitation and at least the exemplary structure identified above could not be any clearer. The same is true of all other means plus function limitation, and no attempt has been made by the Examiner to explain why it can not be understood that one exemplary corresponding structure for “means for receiving owner registration data and item data” is an algorithm step for receiving owner registration data and item data. The Applicant notes that this art unit (3600) has consistently refused to comply with controlling Federal Circuit precedent, as discussed further below, and has instead applied law of its own making to reject valid claims. This objection should be **REVERSED**.

2. **Claims 15 and 16 are Definite for the Reasons Discussed Above.**

The Examiner also rejects claims 15 and 16 for allegedly failing to comply with 35 U.S.C. 112(2), but as shown above, the structure corresponding to the claimed means plus function elements is shown in the specification and drawings. This rejection should be **REVERSED**.

3. The Rejection of Claims 15 and 16 Under 35 U.S.C. 101 Fails to Comply with Controlling Federal Circuit Precedent.

The Examiner also rejects claims 15 and 16 as “not being embodied in computer-readable media,” a standard apparently fabricated by the Examiner and having no relationship to the controlling law of *WMS Gaming* and progeny discussed below. This rejection should be **REVERSED**.

4. Bowers Fails to Provide a Basis for the Rejection of Claims 1, 4-20 and 22 under 35 U.S.C. 102(b), as it Fails to Disclose Each Element of the Claimed Inventions.

The construction of the claims adopted by the Examiner is incorrect, and is used to improperly reject the claims. Claim construction is a question of law, and is reviewed *de novo*. *Markman v. Westview*, 52 F. 3d 967, 34 USPQ2d 1321 (Fed. Cir. 1995), *aff ’d* 116 S.Ct. 1384 (1996). No deference is given to the claim constructions adopted by the Examiner, most of which are implicit and which are not explicitly set forth. Because claim construction is reviewed *de novo*, it is not necessary for the Examiner to set forth an explicit construction, and remand for that reason is therefore not required in the event that the Examiner fails to set forth an explicit claim construction. While claim terms should be given their broadest reasonable construction for the purposes of examination, it is unreasonable to construe claim terms so as to be broader than the ordinary meaning. The Appellants request that the Board pay careful attention to the numerous claim construction issues discussed below.

For example, consider claim 1, which includes an owner registration system receiving owner registration data after a buyer has acquired the item. In the Office action mailed April 2, 2008 at page 5, the Examiner construes “buyer” to be a patron of Bowers that is borrowing an item. This is an unreasonable construction on its face. The purpose of the system of Bowers is to track articles that are loaned, so that the patron that has borrowed the article can be identified, as that patron is under an obligation to return the item that has been borrowed. In contrast, when a buyer purchases an article, they are free to do anything they want with it, and are under no obligation to return it. As such, Bowers fails to disclose the owner registration system receiving owner registration data after the buyer has acquired the item.

Likewise, Bowers fails to disclose a buyer verification system receiving the authentication device data, the associated item data and the owner registration data and storing

buyer verified data if the associated item data correlates to the owner registration data. At page 6 of the Office action mailed April 2, 2008, the Examiner states that the “patron ID is received by the computer terminal 52, which communicates with a database of patrons stored in the computer 48 to verify that the patron is authorized to check out articles 22.” Thus, there are two parties involved in the claim, an owner and a buyer, whereas in Bowers there is only a single party, the patron. Either the patron of Bowers is stored in the database of patrons, and can thus borrow an article, or they are not, and thus cannot borrow an article. The a buyer verification system receives the authentication device data, the associated item data and the owner registration data and stores buyer verified data if the associated item data correlates to the owner registration data. In one exemplary embodiment, this allows buyers to purchase an item from an owner after it has been verified that the owner actually owns the item. Again, Bowers does not deal with transfer of ownership, and the patron of Bowers never takes ownership of any items. As such, there is no way for Bowers to receive owner registration data or store buyer verified data. Accordingly, the rejection of claim 1 must be **REVERSED**.

Claim 4 includes an event verification system providing event verification data associated with the item while it was in use. The Examiner cites to col. 20, lines 58-62 of Bowers which relates to an interrogator receiving article identification information for an article to be removed, but that is part of the process of checking an item out of Bowers. Bowers simply fails to provide event verification data associated with the item while it was in use. A patron checks out a book, and then returns the book. The book may be read, used as a paperweight, or used to swat bugs, but none of those events is ever verified by Bowers. Bowers is a simple library system for checking books out to patrons and checking them back in again. The event cannot be the checking out or the checking in, as those not only demarcate the endpoints of the time that the item was in use, but they are also different terms, which are presumed to connote different meanings. *CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F.3d 1308, 1317 (Fed. Cir. 2000) (“In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings.”); *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 n.3 (Fed. Cir. 2006) (“[T]he use of two terms in a claim requires that they connote different meanings. . . .”). Accordingly, the rejection of claim 4 must be **REVERSED**.

Claim 5 includes the system of claim 1 wherein the purchaser verification system further

comprises a chain of custody system receiving purchase location data and determining whether chain of custody data exists for the item that ends at the purchase location. The Examiner cites to Bowers at col. 4, lines 11-15, but there is no chain of custody data for items that ends at a purchase location in Bowers. As discussed, library books are borrowed, not purchased, and it is unreasonable to construe borrowing a book as purchasing the book. As such, there is no purchase location. Furthermore, the chain of custody of a borrowed book starts and ends at the same location. The purchase location data is entirely missing from Bowers, because it is irrelevant. Locations of books within the library are tracked by the system of Bowers, but that is for inventory management, not chain of custody. Accordingly, the rejection of claim 5 must be **REVERSED**.

Claim 6 includes the system of claim 1 further comprising an alert system generating an alert to an operator if the associated item data does not correlate to the owner registration data. The Examiner cites to col. 5, lines 43-45 of Bowers, which only disclose a zone interrogator for determining if an item leaves a permitted zone. No reasonable construction of claim 6 could read on a zone interrogator. In one exemplary embodiment, claim 6 would generate an alert if a seller was trying to sell an item that they are not the owner of. Items leaving zones are completely unrelated, and are instead used to see if an item has been checked out before it is allowed to leave with a patron (but there is no disclosure that the specific patron is even identified as part of the zone interrogator process, just that the item has been checked out to someone). Thus, under the system of Bowers, a patron could check out a book, and another patron could leave with the book, and the zone interrogator would not generate an alarm. There is simply no correlation to owner registration data. Accordingly, the rejection of claim 6 must be **REVERSED**.

Claim 7 includes the system of claim 1 further comprising an item transfer system receiving purchaser data from an owner and requesting confirmation from a purchaser based on the purchaser data. The Examiner cites to col. 4, lines 52-57 of Bowers, but this is just the ordinary library book check out process. Again, there are two parties involved in the claim, a purchaser and an owner, and there is simply no need for a library book check out system to request confirmation from a purchaser. Even if “purchaser” was improperly construed to encompass a library patron that is only borrowing a book, the patron walks up to a desk with the book and it is checked out to the patron. No confirmation is requested from the patron.

Anybody that has ever checked a library book out from a library knows this – the fact that you have asked to check out the book is taken as confirmation that you want to check it out, you are not asked to confirm that you want to check it out. The square peg of Bowers simply does not fit into the round hole of claim 7. Accordingly, the rejection of claim 7 must be **REVERSED**.

Claim 8 includes the system of claim 1 further comprising a personage verification system receiving personage data and providing item data that corresponds to the personage data. The Examiner cites to col. 4, lines 43-44 of Bowers that disclose a patron identification device, but again, the use of different terms creates a presumption of different meanings. The patron of Bowers, according to the Examiner, is the owner, the purchaser and the personage! Such an unreasonably broad construction is contrary to controlling law, and the rejection of claim 8 must be **REVERSED**.

Claim 9 includes generating confirmation data if the owner registration data and the item description data are correlated to the authentication device data. The Examiner cites to col. 17, lines 31-34 of Bowers that disclose associating a patron identifier with a borrowed item, but that is not generating confirmation data if the owner registration data and the item description data are correlated to the authentication device data. In Bowers, a patron (not an owner) is associated with an item using some kind of identification of the item. That is unrelated to what is claimed, in which the confirmation data is generated if the owner registration data and the item description data are correlated to the authentication device data. No confirmation data is generated by Bowers, and a patron ID is associated with an item, no owner registration data and item description data are correlated to the authentication device data. Accordingly, the rejection of claim 9 must be **REVERSED**.

Claim 10 includes the method of claim 9 further comprising generating alert data if the owner registration data and the item description data are not correlated to the authentication device data. The Examiner relies on the zone alarm of Bowers that generates an alert if an item is not checked out, but Bowers does not disclose generating alert data if the owner registration data and the item description data are not correlated to the authentication device data. There is just a simple flag – item is checked out, or item is not checked out. No correlation to patron data is even disclosed, much less owner registration data. Accordingly, the rejection of claim 10 must be **REVERSED**.

Claim 12 includes the method of claim 9 wherein generating confirmation data if the

owner registration data and the item description data are correlated to the authentication device data comprises determining whether item description data provided with the owner registration data matches item description data associated with the authentication device data. The Examiner cites to col. 20, lines 38-40 of Bowers, but that is again just the simple flag to see if the item is checked out when the patron leaves with the item. There is simply no determination of whether item description data provided with the owner registration data matches item description data associated with the authentication device data, which is just common sense to anyone that has ever checked a book out from a library. Accordingly, the rejection of claim 12 must be **REVERSED**.

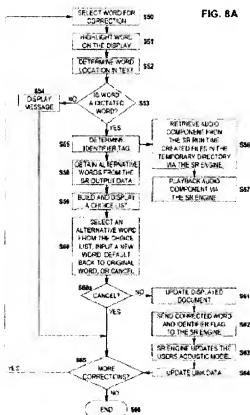
Claim 13 includes the method of claim 9 further comprising: receiving personage data associated with the item; and generating a report that includes the item data based on the personage data. Again, the Examiner confounds the personage data with the owner registration data, for which there is a legal presumption created by controlling precedent that these are different things. Accordingly, the rejection of claim 13 must be **REVERSED**.

Claim 14 includes the method of claim 9 further comprising: receiving item transfer data from a current owner; receiving transfer confirmation data from a prospective owner; and storing the prospective owner data as the owner registration data after receiving the transfer confirmation data. The Examiner cites to numerous unrelated sections of Bowers dealing with checking items out and checking items as they pass through a zone detector to see if they are checked out, but there are no current owners or prospective owners in Bowers. As such, there is simply no transfer confirmation data from a prospective owner. Again, anyone that has ever used a library would see why this is inapplicable – when you check a book out from a library, it is expected that you will return it. You are not the new owner, and the library expects the book to be returned. Accordingly, the rejection of claim 14 must be **REVERSED**.

Claim 15 includes means for receiving owner registration data and item data, means for determining whether the item data matches stored item data, and means for storing the owner registration data as authenticated owner registration data. Although the Examiner cites to functional descriptive material as allegedly disclosing the corresponding structure to the claimed means plus function elements, controlling Federal Circuit precedent requires in “a means-plus-function claim in which the disclosed structure is a computer, or microprocessor, programmed to carry out an algorithm, *the disclosed structure is not the general purpose computer, but rather*

the special purpose computer programmed to perform the disclosed algorithm.” WMS Gaming, Inc. v. Int’l Game Technology, 184 F.3d 1339, 1349 (Fed. Cir. 1999). (Emphasis added.)

Further recent guidance from the Federal Circuit confirms that flowchart algorithms and other data structures are the proper structure for means plus function claims drawn to special purpose computers. In *Allvoice Computing v. Nuance Comm.*, 504 F.3d 1236, 1245 (Fed. Cir. 2007), flowchart algorithms such as those in Figure 9 of the pending application were held to provide sufficient structure for such means plus function limitations. Of particular relevance, the data structures and flowchart algorithms reproduced in the Federal Circuit’s opinion are provided here for reference:



An exemplary flowchart algorithm of Figure 7 of the pending application is reproduced below for convenience:

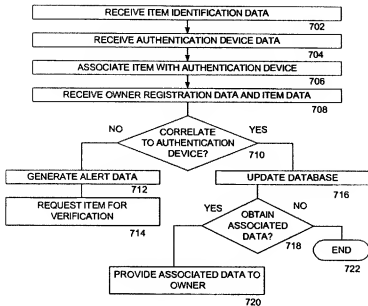


FIGURE 7 700↑

In this regard, Bowers is similar to U.S. Patent 6,093,102, recently discussed in *Aristocrat Technologies Australia v. International Gaming Technology* (2007-1419) (Fed. Cir. 2008), where the Federal Circuit held the claims invalid as indefinite under 35 U.S.C. 112(2), as lacking corresponding structure. A review of Bowers reveals that it, too, is utterly lacking in any relevant structure that would apply to the means plus function limitations in the pending claims. Accordingly, the rejection of claim 16 must be **REVERSED**.

Claim 16 includes the system of claim 15 wherein the means for determining whether the item data matches stored item data further comprises an item identification system receiving authentication device data from an authentication device attached to the item and storing the authentication device data as the item data. Accordingly, the rejection of claim 16 must be **REVERSED**.

Claim 17 includes the system of claim 15 further comprising an authentication device attached to the item in a manner that allows the authentication device to be read by an authentication device reader and that generates an indication if the authentication device is removed from the item. The Examiner construes this as a “physically non-deactivatable tag,” but again, the plain meaning of the claim language excludes any construction that would cover the materials cited by the Examiner. Accordingly, the rejection of claim 17 must be **REVERSED**.

Claim 19 includes the system of claim 18 further comprising a buyer identification

system receiving buyer identification data and generating buyer transfer query data. The Examiner construes this as covering identification of “articles to be borrowed.” Again, the plain meaning of the claim language excludes any construction that would cover the materials cited by the Examiner. Accordingly, the rejection of claim 19 must be **REVERSED**.

Claim 22 includes the system of claim 1 further comprising a tracking personalization system receiving item data and associating the item data with a personalization database. Again, the term personalization database is being equated with claim terms such as item registration system, an owner registration system, and a buyer verification system receiving, contrary to the presumption that different terms connote different meanings. Accordingly, the rejection of claim 22 must be **REVERSED**.

5. Bowers in view of Molee Fails to Provide a Prima Facie Basis for the Rejection of Claims 2 and 3 under 35 U.S.C. 103(b), as they Fail to Disclose Each Element of the Claimed Inventions.

Claim 2 includes the system of claim 1 wherein the authentication device comprises: a radio frequency identification tag having a unique identifier; a metallic tag having a hologram etched upon a surface; and a peel-away adhesive layer affixed to the radio frequency identification tag and the metallic tag, wherein a portion of the peel-away adhesive layer remains affixed to the item if the authentication device is removed from the item. The Examiner cites to col. 2, lines 19-22 of Molee, but nothing in Molee discloses a portion of the peel-away adhesive layer remains affixed to the item if the authentication device is removed from the item. Molee does disclose that removal of the hologram destroys the hologram, but fails to disclose that a portion of the peel-away adhesive layer remains affixed to the item if the authentication device is removed from the item. Accordingly, the rejection of claim 2 must be **REVERSED**.

Claim 3 includes the system of claim 2 wherein the radio frequency identification tag is affixed to the peel-away adhesive layer and is separate from the metallic tag, such that the radio frequency identification tag remains affixed to the item if the authentication device is removed from the item. As previously discussed, Molee fails to disclose that anything remains affixed to the item when the hologram is removed, just that the hologram is destroyed. Accordingly, the rejection of claim 2 must be **REVERSED**.

6. Bowers in view of Conway Fails to Provide a Prima Facie Basis for the Rejection of Claim 21 under 35 U.S.C. 103(b), as they Fail to Disclose Each Element of the Claimed Invention.

Claim 21 includes the system of claim 1 further comprising an item appraisal system receiving item appraisal data and associating the item appraisal data with item data. Conway merely teaches activity based cost tracking, not item appraisal. The costs associated with a tracked item have no relationship to the appraised value of an item. Accordingly, the rejection of claim 21 must be **REVERSED**.

VIII. APPENDIX OF CLAIMS (37 C.F.R. § 41.37(c)(8))

The text of the claims involved in the appeal are as follows:

1. A system for tracking an authenticated item comprising:
 - an authentication device affixed to the item;
 - an item registration system receiving authentication device data from the authentication device and associated item data and storing the authentication device data and the associated item data; and
 - an owner registration system receiving owner registration data after a buyer has acquired the item; and
 - a buyer verification system receiving the authentication device data, the associated item data and the owner registration data and storing buyer verified data if the associated item data correlates to the owner registration data.
2. The system of claim 1 wherein the authentication device comprises:
 - a radio frequency identification tag having a unique identifier;
 - a metallic tag having a hologram etched upon a surface; and
 - a peel-away adhesive layer affixed to the radio frequency identification tag and the metallic tag, wherein a portion of the peel-away adhesive layer remains affixed to the item if the authentication device is removed from the item.
3. The system of claim 2 wherein the radio frequency identification tag is affixed to the peel-away adhesive layer and is separate from the metallic tag, such that the radio frequency identification tag remains affixed to the item if the authentication device is removed from the item.
4. The system of claim 1 wherein the item registration system further comprises:
 - an item check-out system receiving item check-out data for the item when it is removed from inventory for use;
 - an item check-in system receiving item check-in data for the item when it is returned to inventory from use; and
 - an event verification system providing event verification data associated with the item

while it was in use.

5. The system of claim 1 wherein the purchaser verification system further comprises a chain of custody system receiving purchase location data and determining whether chain of custody data exists for the item that ends at the purchase location.

6. The system of claim 1 further comprising an alert system generating an alert to an operator if the associated item data does not correlate to the owner registration data.

7. The system of claim 1 further comprising an item transfer system receiving purchaser data from an owner and requesting confirmation from a purchaser based on the purchaser data.

8. The system of claim 1 further comprising a personage verification system receiving personage data and providing item data that corresponds to the personage data.

9. A method for tracking an authenticated item comprising:
affixing an authentication device to the item;
storing authentication device data and item description data;
receiving owner registration data; and
generating confirmation data if the owner registration data and the item description data are correlated to the authentication device data.

10. The method of claim 9 further comprising generating alert data if the owner registration data and the item description data are not correlated to the authentication device data.

11. The method of claim 9 wherein affixing the authentication device to the item comprises affixing a radio frequency identification tag to the item.

12. The method of claim 9 wherein generating confirmation data if the owner registration data and the item description data are correlated to the authentication device data

comprises determining whether item description data provided with the owner registration data matches item description data associated with the authentication device data.

13. The method of claim 9 further comprising:
receiving personage data associated with the item; and
generating a report that includes the item data based on the personage data.

14. The method of claim 9 further comprising:
receiving item transfer data from a current owner;
receiving transfer confirmation data from a prospective owner; and
storing the prospective owner data as the owner registration data after receiving the transfer confirmation data.

15. A system for authenticating an item comprising:
means for receiving owner registration data and item data;
means for determining whether the item data matches stored item data; and
means for storing the owner registration data as authenticated owner registration data.

16. The system of claim 15 wherein the means for determining whether the item data matches stored item data further comprises an item identification system receiving authentication device data from an authentication device attached to the item and storing the authentication device data as the item data.

17. The system of claim 15 further comprising an authentication device attached to the item in a manner that allows the authentication device to be read by an authentication device reader and that generates an indication if the authentication device is removed from the item.

18. The system of claim 15 further comprising an owner flagging system receiving flag data for the item and generating item transfer data.

19. The system of claim 18 further comprising a buyer identification system receiving

buyer identification data and generating buyer transfer query data.

20. The system of claim 19 further comprising a buyer verification system receiving buyer transfer confirmation data and changing the owner registration data to the buyer identification data.

21. The system of claim 1 further comprising an item appraisal system receiving item appraisal data and associating the item appraisal data with item data.

22. The system of claim 1 further comprising a tracking personalization system receiving item data and associating the item data with a personalization database.

IX. EVIDENCE APPENDIX (37 C.F.R. 41.37(c)(9))

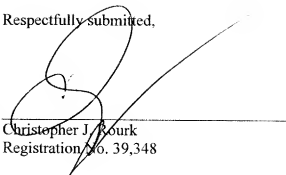
None.

X. RELATED PROCEEDINGS APPENDIX (37 C.F.R. 41.37(c)(10))

None.

Respectfully submitted,

By:


Christopher J. Kourk
Registration No. 39,348

Date: November 3, 2008

JACKSON WALKER L.L.P.
901 Main Street, Suite 6000
Dallas, Texas 75202
214-953-5990 Direct Telephone
214-661-6604 Direct Facsimile